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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Supplement No. 33

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 65/31 and met at United Nations Headquarters from 28 February to 4 March and on 7 and 9 March 2011.

2. In accordance with paragraph 5 of General Assembly resolution 50/52, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held four meetings: the 260th, on 28 February, the 261st, on 4 March, and the 262nd and 263rd, on 9 March. The Working Group of the Whole, established at the 260th meeting, held four meetings, on 28 February and on 1, 2 and 4 March.

4. The session was opened by Carlos Sorreta (Philippines), in his capacity as Chair of the previous session of the Special Committee.

5. At its 260th meeting, on 28 February, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981 (A/36/33, para. 7) elected the following members of its Bureau:

Chair:
María Rubiales de Chamorro (Nicaragua)

Vice-Chairs:
Tofig Musayev (Azerbaijan)
Jane Gasu (Ghana)

6. At its 261st meeting, on 4 March, the Special Committee elected the following members of its Bureau:

Vice-Chairs:
Esmaeil Baghaei Hamaneh (Iran, Islamic Rep. of)

Rapporteur:
Hilding Lundkvist (Sweden)

7. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

8. The Director of the Codification Division of the Office of Legal Affairs, Vaclav Mikulka, acted as Secretary of the Special Committee. The Deputy Director of the Division, George Korontzis, acted as Deputy Secretary of the Special Committee and Secretary of the Working Group of the Whole. The Codification Division provided substantive services for the Special Committee and the Working Group.

9. At its 260th meeting, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

5. Consideration of the questions referred to in General Assembly resolution 65/31 of 6 December 2010, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

10. General statements touching on all or several items were made at the 260th meeting, as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

11. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all of the related reports of the Secretary-General,[1] including the most recent one, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions",[2] and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162;[3] and a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session on the strengthening of certain principles concerning the impact and application of sanctions.[4]

12. Also with regard to the question of the maintenance of international peace and security, the Special Committee had before it a further revised working paper,[5] introduced by Cuba during the 2009 session, of the proposal submitted by the same delegation at the 1997 session entitled "Strengthening of the role of the Organization and enhancing its effectiveness";[6] a revised proposal submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[7] a revised working paper submitted by Belarus and the Russian Federation at the 2005 session containing a revised version of a General Assembly draft resolution;[8] and a revised working paper submitted by the Bolivarian Republic of Venezuela entitled "Open-

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[1] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334, A/60/320, A/61/304, A/62/206 and Corr.1, A/63/224 and A/64/225.

[2] A/65/217.

[3] A/53/312.

[4] A/AC.182/L.110/Rev.1; see A/57/33, para. 89. The working paper constituted a revision of the proposal submitted by the Libyan Arab Jamahiriya during the Committee's 2001 session (A/AC.182/L.110 and Corr.1; see A/56/33, para. 116).

[5] A/AC.182/L.93/Rev.1.

[6] See A/52/33 and Corr.1, para. 59. An addendum to the proposal was submitted at the 1998 session (see A/53/33, para. 84).

[7] See A/53/33, para. 98.

[8] See A/60/33, para. 56. During the Committee's 1999 session, Belarus and the Russian Federation submitted a working paper containing a draft General Assembly resolution (A/AC.182/L.104) in which it was recommended that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. At the same session, following discussions, the sponsors submitted a revised version of the draft resolution for future consideration (A/AC.182/L.104/Rev.1; see A/54/33, paras. 89-101). A further revised version was submitted at the 2001 session (A/AC.182/L.104/Rev.2; see A/56/33, para. 178).

ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs".[9]

13. At its 263rd meeting, on 9 March 2011, the Special Committee adopted its report on its 2011 session.

[9] A/AC.182/L.130, which superseded the proposal made by the Bolivarian Republic of Venezuela at the 2009 session. See A/65/33, annex.

Chapter II
Recommendations and decisions of the Special Committee

14. The Special Committee submits to the General Assembly:

(a) With regard to the question of the maintenance of international peace and security, the recommendation in paragraph 37 below, and, concerning the strengthening of the role of the Organization and enhancing its effectiveness, its recognition of the value of ongoing efforts within the United Nations to improve the workings of the Organization, including those with a view to ensuring the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter of the United Nations.

(b) With regard to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation in paragraph 63 below.

Chapter III
Maintenance of international peace and security

A. Implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions

15. The Special Committee considered the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions during the general exchange of views held at the 260th meeting, on 28 February 2011, and during the 1st and 2nd meetings of the Working Group of the Whole, on 28 February and 1 March 2011.

16. At its 2nd meeting, on 1 March, the Working Group was briefed by representatives of the Department of Political Affairs and the Department of Economic and Social Affairs on developments relating to paragraph 11 of the report of the Secretary-General on this question (A/65/217), as requested by the General Assembly in paragraph 15 of its resolution 65/31. The statements were circulated.

17. Several delegations reaffirmed that sanctions, applied in accordance with the Charter of the United Nations, remained an important instrument for the maintenance and restoration of international peace and security. It was observed that, in recent years, the sanctions regimes adopted by the Security Council had demonstrated that sanctions could be applied in a targeted way so as to substantially minimize the possibility of adverse consequences to civilian populations as well as to third States.

18. Several delegations emphasized that sanctions should be introduced and applied in conformity with the provisions of the Charter and international law, should be clearly defined, and should be introduced only after all means of peaceful settlement had been exhausted and their effects had been thoroughly considered. They should not be applied "preventively" in instances of mere violation of international law and should be imposed only when there existed a threat to international peace and security or an act of aggression. It was reiterated that targeted sanctions constituted a better option for minimizing negative effects on civilian populations. Sanctions should have a specified time frame, be subject to periodic review and be lifted as soon as their objectives were achieved. Concern was expressed over the imposition of unilateral sanctions in violation of international law and the right to development. A point was made that the role of the General Assembly should be strengthened in relation to sanctions.

19. Several delegations noted that none of the sanctions committees had been approached by Member States with regard to special economic problems arising from the implementation of sanctions since 2003, as confirmed in the above-mentioned report of the Secretary-General (A/65/217). They also noted that neither the General Assembly nor the Economic and Social Council had found it necessary in 2010 to take any action relating to that matter. On those grounds, they expressed the view that the question of assistance to third States affected by the application of sanctions was no longer relevant, should not be a matter of priority for the Special Committee and did not merit further discussion.

20. According to other delegations, the consideration of the issue of assistance to third States affected by the application of sanctions was of a preventive nature and

therefore should continue to be considered by the Special Committee and any proposal submitted on that matter should be considered on a priority basis. The view was expressed that the fact that no State had required assistance in the matter should not imply that the subject no longer merited discussion.

21. It was stated that although the introduction by the Security Council of targeted sanctions and improved working methods with regard to the application of sanctions had helped to avoid the unintended effects of sanctions, the possibility of such effects still remained. The view was expressed that the issue of establishing mechanisms for assisting affected States, including special funds for economic assistance, merited further consideration. It was also stated that the Security Council should continue to pay attention to the humanitarian effects of sanctions before applying them and to the humanitarian needs of civilians in States targeted by sanctions.

B. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and the application of sanctions

22. The revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions, contained in the 2002 report of the Special Committee (A/57/33, para. 89), was referred to, in general terms, during the general exchange of views held at the 260th meeting of the Special Committee, on 28 February 2011, and was considered at the 2nd meeting of the Working Group of the Whole, on 1 March 2011.

23. Several delegations emphasized that sanctions should be introduced and applied in conformity with the provisions of the Charter of the United Nations and international law. Some delegations expressed support for the proposal of the Libyan Arab Jamahiriya, in particular its provision of possible payment of compensation to targeted and/or third States for damage caused by sanctions found to have been unlawfully imposed. It was reiterated that the International Law Commission should give due consideration, in the context of its work on the responsibility of international organizations, to the legal consequences of arbitrarily imposed sanctions by the Security Council.

24. The representative of the Libyan Arab Jamahiriya indicated that his delegation had not received any proposals for amendments to the revised working paper and called upon delegations to study the document further. He requested that the revised working paper continue to be considered by the Working Group in the future.

C. Consideration of the further revised working paper submitted by Cuba at the 2009 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

25. The further revised working paper entitled "Strengthening of the role of the Organization and enhancing its effectiveness",[10] submitted by Cuba at the 2009 session of the Special Committee, was considered by the Special Committee during the general exchange of views held at its 260th meeting, on 28 February 2011, and during the 2nd meeting of the Working Group of the Whole, on 1 March 2011.

26. Some delegations expressed their support for the working paper. Attention was drawn to the important roles of the General Assembly and the Economic and Social Council. References were made to the need to improve the representative character of the Security Council and transparency in its working methods.

27. At the 2nd meeting of the Working Group of the Whole, the sponsor delegation indicated that the proposal had been before the Special Committee for several years and had been revised in 2009, in the light of comments made by delegations. He called upon the Working Group to recommend the adoption by the Special Committee of the working paper submitted by Cuba.

28. At the same meeting, the Working Group of the Whole decided to recommend for adoption by the Special Committee the text as contained in paragraph 32 of the Committee's 2009 session report (A/64/33).

29. At its 262nd meeting, the Special Committee decided not to adopt the recommendation of the Working Group of the Whole.

D. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

30. The revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (see A/53/33, para. 98) was referred to in the general exchange of views held at the 260th meeting of the Special Committee, on 28 February 2011, and was considered at the 2nd meeting of the Working Group of the Whole, on 1 March 2011.

31. The representative of the Libyan Arab Jamahiriya indicated that its delegation was not aware of any suggestions for amendments to the revised working paper and called upon delegations to study the document further.

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[10] For the text, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 33* (A/64/33), para. 32. For previous working papers submitted by the delegation of Cuba on this topic, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 59, and ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

E. Consideration of the revised working paper submitted by Belarus and the Russian Federation

32. The Special Committee considered the revised working paper submitted by Belarus and the Russian Federation at the 2005 session of the Special Committee (see A/60/33, para. 56), in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence, during the general exchange of views at the 260th meeting of the Special Committee, on 28 February 2011, and at the 2nd meeting of the Working Group of the Whole, on 1 March 2011.

33. The representative of the Russian Federation, as co-sponsor of the proposal, referring to the above-mentioned revised working paper, emphasized the continued relevance of its subject matter and spoke in favour of starting a comprehensive discussion which could lead to a general agreement on the issue. The co-sponsor reiterated that the advisory opinion of the Court would address lacunae in the Charter of the United Nations, which did not contain detailed provisions regarding the use of force, especially in the light of the contemporary political situation, which required additional interpretation of the relevant provisions of the Charter. The co-sponsor pointed out that the advisory opinion of the Court would contribute to strengthening the implementation of the jus cogens principle of the non-use of force or the threat of force and clarify the notion of "armed attack" in the light of the provisions of Article 51 of the Charter and other relevant issues. The advisory opinion would be requested from the Court without reference to any specific political issue or situation, so as to contribute to the progressive development of international law relating to the lawful use of force. The co-sponsor clarified that an advisory opinion could be requested from the Court by a resolution of the General Assembly.

34. The representative of Belarus, the other co-sponsor, reiterated that the advisory opinion of the Court would contribute to the uniform interpretation and application of the principles and norms of the Charter regarding the use of force and to strengthening the rule of law in international relations. The co-sponsor spoke in favour of keeping the proposal in the agenda of the Special Committee with a view to finalizing its consideration and adoption.

35. Some representatives reiterated their support for the proposal and for starting the discussion of its substantive aspects and expressed the view that the proposal would contribute to strengthening of the principle of the non-use of force or the threat of force set out in the Charter and to preventing various subjective unilateral interpretations by States of the relevant provisions of the Charter. It was noted that the proposal would also further clarify situations in which States' resort to the use of force without prior authorization by the Security Council, except in the exercise of the right to self-defence, would be unlawful.

36. Some delegations stated that they were not in a position to adopt the proposal or to decide on it yet. The view was expressed that the issue of the use of force had been adequately and clearly addressed in the relevant provisions of the Charter and, consequently, that the proposal that an advisory opinion be requested by the General Assembly from the International Court of Justice on the matter could not be

supported. According to that view, the Special Committee should stop considering the proposal, in part because it had not been able to reach consensus on the proposal even after many years of discussion.

37. At its 262nd meeting, on 9 March 2011, the Special Committee decided to keep the proposal under the agenda item entitled "Maintenance of international peace and security".

F. Consideration of the revised working paper submitted by the Bolivarian Republic of Venezuela entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs"

38. At the 260th meeting of the Special Committee, on 28 February 2011, the delegation of the Bolivarian Republic of Venezuela announced that it had revised the working paper entitled "Special mechanism for the study on the functional relationship of the General Assembly, the Economic and Social Council, with the Security Council" (see A/65/33, annex) and was submitting the revised working paper to the Special Committee for consideration under the agenda item entitled "Maintenance of international peace and security".

39. At the 3rd meeting of the Working Group of the Whole, on 2 March 2011, the representative of the Bolivarian Republic of Venezuela introduced the revised working paper entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs" (A/AC.182/L.130), which reads:

> "The Special Committee on the Charter is authorized by the General Assembly to foster, from a legal perspective, the strengthening of the role of the United Nations. This task necessarily implies protection attributions to preserve the principles and rules laid down in the Charter of the United Nations. This responsibility also implies that the Committee should safeguard the legal components and functional requirements of the principal organs of the Organization.
>
> "The Special Committee on the Charter, in accordance with its mandate, must guarantee the proper implementation of the legal provisions of the Charter of the United Nations, and, in particular, ensure appropriate institutional functioning and coordination among its principal organs. The improper exercise of powers and functions by a principal organ of the United Nations, to the detriment of another, alters the institutional framework established by the Charter of the United Nations.
>
> "In that regard, Article 10 of the Charter authorizes the General Assembly to 'discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter'. The Charter does not confer such authority on any other body. The General Assembly of the United Nations is the principal deliberative, policymaking, representative and supervisory organ of the United Nations, with an intergovernmental and democratic nature.

"As part of the process of revitalizing the United Nations, the process of reforming the United Nations and the Security Council requires an increasingly strengthened role for the Special Committee on the Charter.

"In accordance with the functions conferred upon it by General Assembly resolution 3499 (XXX) of 15 December 1975, the Special Committee on the Charter should continuously study the delicate functional relationship between the different organs of the United Nations and in that regard the following is proposed:

"1. An open-ended working group should be established for the ongoing review of all issues related to implementing and complying with the provisions of the Charter of the United Nations;

"2. Member States should be urged to raise with the Special Committee on the Charter any issues related to implementing and complying with the provisions of the Charter of the United Nations, in particular any issues related to the functioning of the organs of the United Nations; and the Special Committee should address, as a separate item on its agenda, areas in which the functioning of the United Nations could be improved, including coordination among its organs, in order to improve the efficiency of the Organization, in accordance with the provisions of the Charter;

"3. A report on the issues raised by Member States should be introduced at the start of sessions of the Special Committee on the Charter;

"4. The open-ended working group shall study the aforementioned report with a view to making recommendations to the Special Committee on the Charter that would ensure improved functioning of the organs of the United Nations, including coordination among them, where relevant, in strict compliance with the Charter of the United Nations;

"5. The Special Committee on the Charter shall include the aforementioned recommendations in the report on its work to be submitted to the General Assembly;

"6. The Special Committee on the Charter shall examine the implementation of its recommendations to the General Assembly.

"The present proposal seeks to ensure the proper implementation of the Charter of the United Nations and the appropriate discharge of the functions of each organ without detriment to the others, in order to guarantee the proper functioning of the Organization."

40. In response to the queries made by delegations, the sponsor delegation clarified that the revised version of the proposal superseded the previously submitted version, and was not intended to be a proposal for a new agenda item.

41. Some delegations expressed support for the proposal and maintained that the Special Committee was a proper forum to consider it. In this regard, some delegations indicated that the proposal should be given due consideration under the mandate given to the Special Committee in accordance with General Assembly resolution 3499 (XXX). It was also indicated that the proposal would not generate additional expense. Those delegations expressed their readiness to discuss the proposal for the sake of effective utilization of the remaining meetings of the

Special Committee. However, several delegations expressed the view that the purpose of the informal consultations would be to seek additional clarification of the elements of the working paper in the Working Group. According to those delegations, participation in the informal consultations was not to be interpreted as a consideration of the working paper. Those delegations regarded any consideration of the working paper premature at the current session of the Special Committee and stressed that they were not in a position to make any substantive comments on the working paper.

42. Some other delegations pointed out that for the sake of effective utilization of the resources made available to the Special Committee, the sponsor delegation should be requested to provide further clarification on specific questions that might be made by delegations. The view was also expressed that the responsibilities of the principal organs of the United Nations were amply defined in the Charter of the United Nations and that the resources of the Committee should be used in a more productive manner.

43. Some delegations expressed the view that the Security Council had acted beyond the limits, attributions and functions granted to it under the Charter of the United Nations.

44. The Working Group held information consultations on the working paper. At the 262nd meeting, on 9 March 2011, the sponsor delegation reported to the Special Committee on the outcome of the informal consultations. It reported that during those meetings, the sponsor delegation had made an extensive and detailed presentation about the goals and scope of its proposal.

45. Many delegations had shown an interest in understanding specific aspects of the proposal and their implications. Delegations had had the opportunity to direct specific questions, comments and proposals to the sponsor delegation. The Venezuelan delegation had welcomed the active participation of the delegations and had stated that their input would be taken into account.

46. Some delegations had expressed support for the proposal and had maintained that the Special Committee was the proper forum to consider it. Other delegations had observed that it was premature to enter into the substantive debate on the working paper as they had not consulted their capitals. A view had been expressed that the Special Committee should concentrate its efforts in more productive and functionally oriented issues.

47. Several delegations had expressed their appreciation to the sponsor delegation for presenting the working paper and had supported its consideration under the item "Maintenance of international peace and security".

48. The sponsor delegation requested the inclusion of a further revised version of the working paper as an annex to the report of the Special Committee.

Chapter IV
Peaceful settlement of disputes

49. The Special Committee considered the item entitled "Peaceful settlement of disputes" during the general exchange of views at the 260th meeting of the Special Committee, on 28 February 2011, and at the 2nd meeting of the Working Group of the Whole, on 1 March 2011.

50. During the general exchange of views, some delegations reiterated that in accordance with the mandate of the Special Committee, the question of the peaceful settlement of disputes should remain on its agenda. It was noted that in the future, delegations could submit relevant proposals on the subject, which was of continued importance. The central role of the International Court of Justice in the peaceful settlement of disputes and its contribution to maintaining global security was emphasized. The importance of a free choice of means in peaceful dispute settlement was highlighted.

Chapter V

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

51. During the general exchange of views held at the 260th meeting of the Special Committee, on 28 February 2011, as well as during the 3rd meeting of the Working Group of the Whole, on 2 March, delegations commended the ongoing efforts undertaken by the Secretariat to update the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and to reduce the backlog in the preparation of these publications. The continued efforts in making both publications available on the Internet were also welcomed. The significance of the two publications as research tools for the international community and their importance in the preservation of the institutional memory of the Organization was recalled.

52. Some delegations emphasized the necessity of reducing the backlog for volume III of Supplements 7, 8 and 9 of the *Repertory*. The view was expressed that publishing the two publications in all official languages of the United Nations would promote their wider dissemination.

53. Some delegations stated that the two trust funds established for the *Repertory* and the *Repertoire* had facilitated the progress in the elimination of the backlog of these publications and urged Member States to continue to make voluntary contributions to the trust funds.

54. At its 3rd meeting, the Working Group was briefed by the Secretariat on the status of the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

55. Concerning the *Repertory*, it was reported that the backlog with respect to volumes II, IV and VI had been eliminated and that the Secretariat would soon submit five volumes of the *Repertory* for translation and publication. However, the situation with respect to the backlog in volume III remained unchanged. A number of studies for Supplement 10, covering the period from 2000 to 2009, had been completed and placed in the United Nations database. Some other studies for Supplement 10 were under preparation or review.

56. The partnership with Columbia University Law School was continuing for the eighth consecutive year. The recently established cooperation with the University of Ottawa had resulted in the completion of six studies for inclusion in volumes I and II of Supplement No. 10.

57. Since the establishment of the trust fund in 2005, about $100,000 had been donated. After the use of part of the funds for the preparation of several studies for volumes II, IV and VI, about $30,000 remained available in the trust fund.

58. With regard to the *Repertoire*, it was pointed out that in the past year, the Practices and Charter Research Branch of the Security Council Affairs Division had worked on the fourteenth and fifteenth Supplements to the *Repertoire*, covering the period from 2000 to 2007; initiated work on the sixteenth Supplement, covering the years 2008 and 2009; and laid the groundwork for the seventeenth Supplement, which would cover the years 2010 and 2011. The Branch had completely overhauled

the *Repertoire* website as of December 2010 so as to allow for quicker access to the information on the practice of the Council, as contained in the *Repertoire*.

59. Following the briefings, a number of delegations expressed their concerns over the lack of progress with regard to Supplements 7, 8 and 9 of volume III and sought further explanations in this regard. A reference was made to paragraph 12 of General Assembly resolution 65/31, in which, inter alia, the Assembly had called on the Secretary-General "to address, in particular, the backlog in the preparation of volume III of the *Repertory*".

60. The view was expressed that the modalities set up in the Secretary-General's report of 1952[11] should be strictly followed in the preparation of studies for the *Repertoire of the Practice of the Security Council*.

61. In response to the questions raised by delegations, the Secretariat clarified the point that various Departments of the United Nations Secretariat were responsible for the preparation of studies for the *Repertory*, and that a bilateral meeting had been scheduled with the Department concerned to address ways and means of eliminating the backlog in volume III.

62. The representative of the Department of Political Affairs of the Secretariat pointed out that his Department was not solely responsible for the preparation of studies for volume III and that attempts had been made in previous years to address the problem by making cross-references to the *Repertoire* studies in charts relating to the *Repertory*. He emphasized, however, that his Department was determined to do everything it could to eliminate the backlog in volume III of the *Repertory*.

63. The Special Committee on the Charter of the United Nations recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Note with appreciation the contributions made by Member States to the trust fund for the elimination of the backlog in the *Repertory*, as well as the trust fund for the updating of the *Repertoire*;

(c) Reiterate its call for voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory of Practice of United Nations Organs* so as to further support the Secretariat in carrying out the effective elimination of that backlog; voluntary contributions to the trust fund for the updating of the *Repertoire of the Practice of the Security Council*; as well as the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(d) Call upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions;

[11] A/2170.

(e) Express its serious concern that no progress has been made in reducing the backlog in the preparation of volume III of the *Repertory of Practice of United Nations Organs* and calls upon the Secretary-General to address this issue effectively and on a priority basis;

(f) Reiterate the responsibility of the Secretary-General for the quality of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and with regard to the *Repertoire of the Practice of the Security Council*, call upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report of 18 September 1952.[11]

Chapter VI
Working methods of the Special Committee and identification of new subjects

A. Working methods of the Special Committee

64. The issue of the working methods of the Special Committee was addressed by several delegations during the general exchange of views at the 260th meeting of the Special Committee, on 28 February 2011, and considered at the 4th meeting of the Working Group of the Whole, on 4 March 2011.

65. Some delegations continued to urge that the Special Committee consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation, as reflected in paragraph 3 (e) of General Assembly resolution 65/31, and to fully implementing the working methods adopted in 2006. They also urged States to explore ways and means of achieving a better use of resources and of the meetings of the Special Committee by reviewing all its agenda items, looking into the usefulness of further discussing them, and taking into account their relevance and the likelihood of reaching a consensus, before examining proposals for new items. Some delegations suggested that the Special Committee should meet biennially to allow more time to study various proposals before it, and that it shorten its sessions to a maximum of five working days given that, at its current session, it had not fully utilized the time allocated to its meetings. The need to avoid duplication of the work of other bodies of the United Nations was also stressed. A view was expressed in support of suspending consideration by the Special Committee of the proposals which had been discussed for a long time without producing any substantive outcome. A cautious approach to inscribing new items on the agenda was suggested, coupled with a call for the optimal allocation of time for discussion of those items that the Special Committee decided to consider.

66. The view was expressed that the full implementation of the mandate of the Special Committee and revitalization of its work depended upon the political will of States to discuss proposals on its agenda and to achieve consensus, adherence to its methods of work and the configuration of a solid thematic agenda, that would allow for the optimal use of the Special Committee's resources in its work. It was observed that the quality of texts adopted by the Special Committee was more important than the length of time spent in their consideration.

67. Some delegations stressed that conducting an overall review of the working methods of the Special Committee, rather than shortening the duration of its sessions or making them biennial, would benefit its work. While some spoke in favour of maintaining the current duration of the Special Committee's sessions and convening them annually, it was also suggested that the duration of the sessions be extended to 10 working days.

68. Some delegations favoured a flexible approach to the duration of the sessions of the Special Committee. A point was also made that the elaboration of legal instruments should be performed without haste since that complex process might require significant time and might not depend solely on the political will of States.

69. Some delegations expressed regret and deep concern regarding the process through which the Working Group of the Whole had taken action on the further revised working paper submitted by Cuba at the 2009 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (see A/64/33, para. 32). The point was made that the well-established practice of the Special Committee of taking action on the basis of an informed consensus to be reached after a substantive discussion should have been followed, and that the delegations should have had the opportunity to react to suggestions aimed at the immediate adoption of the proposals before the Special Committee, especially those which had not been discussed in substance owing to lack of interest in them. In this case, for example, the view had been made clear that the proposal was not a productive subject for the Special Committee's consideration since the responsibilities of the principal organs of the United Nations were clearly defined in the Charter of the United Nations and that it was unnecessary to further examine the working relationship among the principal organs. The appropriate procedures should be followed regarding action on the proposals, also taking into account that the decision regarding the recommendation to adopt any proposal should be made without undue haste at the relevant meeting of the Special Committee and not at the meeting of the Working Group.

70. Other delegations insisted that the Working Group of the Whole had adopted the above-mentioned proposal by Cuba following proper procedures of the Special Committee and in accordance with the rules of the procedure set up by the General Assembly. A point was made that if certain delegations refused to discuss the substance of proposals, especially those that had been on the Special Committee's agenda for many years, then they should be adopted.

71. The Secretary of the Special Committee answered questions regarding the planning of the work of the Special Committee and the allocation and utilization of its resources. He pointed out that those issues were dealt with by the secretariat of the Special Committee on the basis of relevant standards and rules set up by the General Assembly and the Committee on Conferences and decisions made by the Special Committee and its Bureau, and in the light of the evolving workload of the Special Committee.

72. A point was made that the discussion should focus on the working methods of the Special Committee rather than on financial issues and various details of logistics. Specific suggestions were also made. Thus, it was suggested that allowance be made for the continuation of the general exchange of views after the first day of the session. A more active role of the sponsors of the proposals in engaging other delegations in negotiations of their texts was also encouraged.

B. Identification of new subjects

73. The issue of the identification of new subjects was considered during the general exchange of views held at the 260th meeting of the Special Committee, on 28 February 2011, and at the 4th meeting of the Working Group of the Whole, on 4 March 2011.

74. Some delegations were of the view that the Special Committee, in accordance with its mandate, and through the optimization of its working methods and effective use of its resources, could contribute to the examination of the legal matters related

to the reform and revitalization of the Organization and its organs, including issues relevant to the implementation of the Charter of the United Nations, the role of the General Assembly and the prerogatives of the Security Council and the General Assembly. It was emphasized that sovereign States had the right to present relevant new proposals for the Special Committee's consideration in accordance with its mandate and that not allowing the Special Committee to consider such proposals while, at the same time, criticizing it for the lack of results, was not acceptable.

75. In terms of another view, without the express mandate of the General Assembly, the Special Committee should not consider any new proposals which might envisage amendments to the Charter and that any such amendments should be considered in the overall context of the Organization. It was stated that the proposals before the Special Committee should be urgently debated and analysed with the view to contributing to the finalization of their consideration. Special emphasis was placed on the continuation of the consideration of the items and proposals regarding the question of the maintenance of international peace and security.

76. Several delegations expressed the view that the introduction of any new proposal to the agenda should be considered cautiously. The view was also expressed that the Special Committee should conclude its debate on proposals currently on its agenda in a timely manner in order to enable new subjects to be considered.

77. Several delegations recalled the new subjects proposed at the previous session of the Special Committee and called for their meaningful consideration.

78. The proposal of Ghana for the inclusion of a new subject entitled "Principles and practical measures/mechanisms for strengthening and ensuring more effective cooperation between the United Nations and regional organizations on the matters relating to maintenance of international peace and security in areas of conflict prevention and resolution and post-conflict peacebuilding and peacekeeping, consistent with Chapter VIII of the Charter of the United Nations", was discussed during the general exchange of views at the 260th meeting of the Special Committee and at the 4th meeting of the Working Group of the Whole.

79. The sponsor expressed its hope that the proposal would be kept under consideration by the Special Committee and requested that the discussion on it be deferred to the next session. It was emphasized that such request was by no means an indication of a lack of interest. The sponsor looked forward to continuing deliberations with other delegations and to producing a working paper with concrete inputs on how to optimize the use of preventive diplomacy tools within the United Nations system and in cooperation with regional organizations.

80. The view was expressed that engagement on this topic would present an opportunity for the Special Committee to make a substantial contribution to the practice of the United Nations in regional arrangements by setting out concrete approaches that would give effect to Chapter VIII of the Charter. However, it was also noted that the General Assembly, in resolution 49/57, had already adopted the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security, on the recommendation of the Special Committee, and had encouraged the wide distribution and implementation of the guidance in that Declaration. Concern was voiced as to how the proposal could further contribute to the work that had already been completed by the Organization.

Annex

Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs

Further revised working paper presented by the delegation of the Bolivarian Republic of Venezuela[a]

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization is authorized by the General Assembly to foster, from a legal perspective, the strengthening of the role of the United Nations. This task necessarily implies protection attributions to preserve the principles and rules laid down in the Charter of the United Nations. This responsibility also implies that the Committee should safeguard the legal foundations and functional requirements of the principal organs of the Organization.

The Special Committee, in accordance with its mandate, must guarantee the proper implementation of the legal provisions of the Charter of the United Nations and, in particular, ensure appropriate institutional functioning and coordination among its principal organs. The improper exercise of powers and functions by a principal organ of the United Nations, to the detriment of another, alters the institutional framework established by the Charter.

In that regard, Article 10 of the Charter authorizes the General Assembly to "discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter". The Charter does not confer such authority on any other body. The General Assembly of the United Nations is the principal deliberative, policymaking, representative and supervisory organ of the United Nations, with an intergovernmental and democratic nature.

As part of the process of revitalizing the United Nations, the process of reforming the United Nations and the Security Council requires an increasingly strengthened role for the Special Committee.

In accordance with the functions conferred upon it by General Assembly resolution 3499 (XXX) of 15 December 1975, the Special Committee should continuously study the delicate functional relationship between the different organs of the United Nations and in that regard the following is proposed:

1. An open-ended working group should be established for the ongoing review of all legal issues related to implementing and complying with the provisions of the Charter of the United Nations;

2. Member States should be urged to raise with the Special Committee through the open-ended working group any issues related to implementing and complying with the provisions of the Charter, in particular any legal issues related to the functioning of the organs of the United Nations; and the open-ended working group should address from the legal perspective areas in which the functioning of the United Nations could be improved, including coordination among its organs, in accordance with the provisions of the Charter;

[a] A/AC.182/L.130, as further revised by the sponsor delegation.

3. Any legal issues raised by Member States should be introduced at the start of sessions of the Special Committee;

4. The open-ended working group shall study the aforementioned issues raised by Member States with a view to making legal recommendations to the Special Committee that would ensure improved functioning of the organs of the United Nations, including coordination among them, where relevant, in strict compliance with the Charter;

5. The Special Committee shall include the aforementioned recommendations in the report on its work to be submitted to the General Assembly;

6. The Special Committee shall examine the implementation of its recommendations to the General Assembly.

The present proposal seeks to ensure the proper implementation of the Charter of the United Nations and the appropriate discharge of the functions of each organ without detriment to the others, in order to guarantee the proper functioning of the Organization.

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